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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|--------------------------|---------------------|------------------|
| 09/714,665 | 11/17/2000 | Michael William Urbanski | 057234-0101 | 4398 |

22428 7590 05/01/2008
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| EXAMINER |
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CHAMPAGNE, DONALD

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| ART UNIT | PAPER NUMBER |
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3688

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| MAIL DATE | DELIVERY MODE |
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05/01/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
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| Advisory Action Before the Filing of an Appeal Brief | Application No. 09/714,665 | Applicant(s) URBANSKI ET AL. | |
| | Examiner Donald L. Champagne | Art Unit 3688 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 2, 4, 5, 8, 14, 17, 19, 20, 23, 25, 26, 29, 32, 34, 35 and 40-57.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Donald L. Champagne/
 Primary Examiner, Art Unit 3688

Continuation of 11. does NOT place the application in condition for allowance because: De Lorme et al. teaches claims 58, 61 and 64 (col. 59 line 32).

Amended claim 55 merely combines the former claims 55 and 56, and would be rejected with the previous rejection of claim 55. Applicant's traverse and request for a reference supporting the tasking of official notice is not effective because applicant has not provided adequate information or argument so that on its face it creates a reasonable doubt regarding the circumstances justifying the official notice (MPEP § 2144.03). An effective traverse must be based on alleged evidence, not mere denial. Applicant could, for example, have submitted an expert affidavit or declaration alleging that it was not common practice to allow a favored vendor to match a submitted bid. The examiner would then have been compelled to produce counter evidence. But applicant submitted no such evidence. Therefore, the presentation of a reference to substantiate the official notice is not deemed necessary. The examiner's taking of official notice is maintained.

A careful search would be required to determine if amended claims 59, 60, 62, 63, 65 or 66 are taught by De Lorme et al. or other prior art.

The proposed amendment of claim 57 would overcome the rejection of that claim.

For claims 40, 57 and 54, the examiner would have to determine how to interpret "contextual information". Since there does not appear to be a special "clear definition" for this phrase in the specification, it is likely that De Lorme et al reads on proposed claims 40, 47 and 54. (Note on interpretation of claim terms - Unless a term is given a "clear definition" in the specification (MPEP § 2111.01), the examiner is obligated to give claims their broadest reasonable interpretation, in light of the specification, and consistent with the interpretation that those skilled in the art would reach (MPEP § 2111). An inventor may define specific terms used to describe invention, but must do so "with reasonable clarity, deliberateness, and precision" (MPEP § 2111.01.III). A "clear definition" must establish the metes and bounds of the terms. A clear definition must unambiguously establish what is and what is not included. A clear definition is indicated by a section labeled definitions, or by the use of phrases such as "by xxx we mean"; "xxx is defined as"; or "xxx includes, but does not include ...". An example does not constitute a "clear definition" beyond the scope of the example.)